

The *Corpus Delicti* Rule

For DUI & Other Cases

Corpus Delicti Rule

Before Defendant's Incriminating Statement is Admissible at Trial, State Must Show:

- 1) a reasonable inference that
- 2) a crime was committed by some person.

State v. Gillies, 135 Ariz. 500, 506 (App. 1983)

The *Corpus Rule* **Only** Addresses
Whether the Defendant's
Statements are admissible to
prove the crime.

It does not address – whether the
State has proven the crime beyond
a reasonable doubt during trial.

PURPOSE FOR RULE

Concern Confession is Untrustworthy
due to:

1. Mental Instability, or
2. Improper Police Procedures

State v. Superior Court (Plummer, RPI), 188 Ariz. 147 (App. 1996)



Point out no reason to fear either

NEED FOR RULE?

Consider - Rule Predates Other
Procedural Protections:

1. Rule 11 Proceedings
2. *Miranda v. Arizona*
3. Voluntariness Hearings
4. Right to Counsel

Other Standards (Trustworthiness)

- State has to prove confession reliable – not that the crime actually happened.
- Alaska, Connecticut, Georgia, Hawaii, Idaho, Montana, New Hampshire, North Carolina, Oklahoma, Wisconsin, **North Dakota**
- *See, State v. Morgan*, 204 Ariz. 166 (App. 2002).

Where Does It Come From?

- “The *corpus delicti* rule was invented by courts,” and although some states have codified the principle by statute, in most jurisdictions, including Arizona, it is “entirely a creature of the common law.”

State v. Rubiano, 214 Ariz. 184, 186 (App. 2007).

Legal Basis For the Rule????

- Not Constitutional
- Not Statutory
- Not in the Rules of Evidence
- Not in Rules of Criminal Procedure
- Most Common Law was Rescinded in AZ

May Want to Preserve the Argument for Appeal

...The State questions the continuing need and legal underpinnings for the *corpus delicti* rule. Due to the various safeguards, such as *Miranda* and voluntariness, which did not exist before the rule, the *corpus delicti* rule has long outlived its usefulness. The State acknowledges, however, that this Court is bound by published decisions of the Arizona Supreme Court that recognize the rule and will reserve its challenges to such time when the issue may be raised in the Supreme Court. ¶

The Crime Does Not Have to be the Crime You are Using the Statement For

It can be a closely related CHARGED crime.

State v. Morgan, 204 Ariz. 166 (App. 2002); *State v. Sarullo*, 219 Ariz. 431 (App. 2008).

Corpus Delicti

May be proved by circumstantial evidence alone. *State v. Rivera*, 103 Ariz. 458, 445 P.2d 434 (1968).

TIMING

- Evidence used to establish the reasonable inference need not be before the statement.
- A variation in the order of proof does not constitute prejudice.



State v. Gerlaugh, 134 Ariz. 164 (1982)

Application of the *Corpus Delicti* Rule is for the Court

- Not the Jury
- Jury Instructions addressing *corpus* are improper

State v. Jones, 198 Ariz. 18 (App. 2000); *State v. Loyd*, 118 Ariz. 106 (App. 1978).

Corpus Delicti Rule & Hearsay

Is Hearsay Admissible?



The *Corpus* Rule Addresses a Preliminary Question of Admissibility



Is the defendant's incriminating statement admissible?

RULES OF EVIDENCE

On questions of admissibility, the Court
“is not bound by the Rules of Evidence,
except those with respect to privileges”

Rule 104(a) *Rules of Evid.*

Hearsay should be admissible in a *corpus*
hearing

Ruling of Admissibility

“The judge makes preliminary rulings on the admissibility of the evidence . . .”

Loyd, at 110, 574 P.2d at 1329.

Rule 104 & Hearsay Cases

- *State ex rel. McDougall v. Superior Court (Plummer, RPI)*, 188 Ariz. 147 (App. 1996)(husband's hearsay statement used to assist in establishing inference of DUI).
- General Rule 104 cases – *State v. Edwards*, 136 Ariz. 177 (1983); *State v. Hutchinson*, 141 Ariz. 583 (App. 1984); *State v. Simmons*, 131 Ariz. 482 (App. 1982).

Confrontation Clause Does Not Apply Pre-trial

Confrontation is a trial right

Pennsylvania v. Ritchie, 480 U.S. 39, 52 ();
California v. Green, 399 U.S. 149, 157 (1970);
Barber v. Page, 390 U.S. 719, 725 (1968).

So does not apply To Preliminary
Questions of Admissibility

Rulings Are Mixed On Preliminary Admissibility Issue

- **McClennen** – Trial Issue
- **Downey** – Preliminary Issue



Often Have a Hearsay Exception

- Present sense impression
- Excited utterances
 - 911 calls



Corpus Evidence Does Not Have to be Admissible

State v. Gerlaugh, 134 Ariz. 164 (1982)

(co-defendant's statements – could not be used to determine defendant's guilt, but could be used to satisfy the *corpus delicti* rule)

State v. Barragan-Sierra, 219 Ariz. 276 (App. 2008).

DUI *Corpus* Cases

- *State ex rel. McDougall v. Superior Court (Plummer, RPI)*, 188 Ariz. 147 (App. 1996). (Officer observed impaired driving. Both potential drivers were drunk – sufficient evidence that some person committed the crime of DUI)

DUI *Corpus* Cases

- ❑ *State v. Villa*, 179 Ariz. 486 (App. 1994).
 - ❑ Felony DUI –Drivers presentation of ID card and inability to produce license when request was repeated supported inference license was suspended.
 - ❑ Because State gave more than enough evidence of underlying DUI charge, it was not required to present independent evidence of suspension as it only raises offense to a higher degree.

DUI *Corpus* Cases

- *In re Felipe O*, 2 CA-JV 2010-0097
UNPUBLISHED.
- Inoperable vehicle stranded on a curb when officer arrived. Officer arrived almost immediately after crash (odor of air bag powder). Defendant approached officer within “a minute,” displayed signs of intoxication and had BAC of .157.
- Distinguishes *Fair*.

Commonly Cited Defense Case

- *State v. Fair*, 23 Ariz. App. 264 (1975).
 - Court held State presented insufficient evidence of DUI for conviction (driving or APC) .
 - Defendant did not Confess!!
 - Case does not address the *corpus delicti* rule or if evidence creates a reasonable inference of DUI.
 - (No evidence defendant was present when wrecked vehicle found, vehicle not registered to defendant, chest pains could be from vomiting, no one testified defendant drove/APC.)

DUI Cases From Other States

- *Commonwealth v. De Leon*, 276 Pa. Super. 36, 419 A.2d 82 (Pa. Super. 1980). (One-car accident – knocked down stop sign, defendant lying outside car, odor of alcohol; sufficient to prove *corpus*)
- *Groves v. State*, 479 N.E.2d 626 (Ind. App. 1985) (One-car accident – collided with a tree, car registered to defendant, six to eight other present, defendant impaired; sufficient to prove *corpus*)

DUI Cases From Other States

- *County of Dade v. Pedigo*, 181 So.2d 720 (Fla. App. 1966). (Evidence of a collision, drunk defendant standing by one of the cars, no one else connected with the vehicle)

DUI *Corpus Delicti* Proof

- Does Not Require Proof:
 1. Defendant was Observed Driving
 2. Defendant was the Only Possible Driver
We only need reasonable inference someone drove
 3. By Non-circumstantial (Direct) Evidence
 4. Proof Beyond a Reasonable Doubt that the Crime Occurred
We only need reasonable inference

WHAT TO PRESENT?

- Argue Reasonable Inference:
 1. Crime Occurred
 2. Someone Is Criminally Responsible



WHAT TO PRESENT?

- Signs & Symptoms of Impairment - everyone's if possible
- Breath/Blood Test Results
- Drinking/Drug Paraphernalia
- How Car Was Driven, By Someone, Possibly Defendant (**Nature of Wreck/Bad Driving**)
- Injuries – anyone's
- Defendant's Proximity to the Vehicle
- Evidence Showing Crash was Recent

WHAT TO PRESENT?

- Vehicle Ownership--if it helps
- The fact that Defendant took Responsibility for Vehicle
- No one Else Connected to Vehicle
- Distance from Crash to Defendant's Home
- Hearsay Statements
- *Morgan* Evidence (closely related crimes)
- Move in Accident Report or DR
- Defendant's Statement

CORPUS Rule DOES NOT APPLY

- To an accident with an Injury

A.R.S. § 28-1388 (G):

A statement by the defendant that the defendant was driving a vehicle that was involved in an accident resulting in injury to or death of any person is admissible in any criminal proceeding without further proof of *corpus delicti* if it is otherwise admissible.



CORPUS Rule DOES NOT APPLY

- During a Guilty Plea Proceeding (court must find is knowing and voluntary)

State v. Rubiano, 214 Ariz. 184 (App. 2007)

BUT IT DOES APPLY

- During a Submittal on Police Reports

State v. Janise, 116 Ariz. 557, 559 (1977)

CORPUS Rule DOES NOT APPLY

- Aggravating Factors Relating only to Punishment (facts which increase degree of crime)

State v. Cook, 547 P.2d 50 (App. 1976), Rev'd on other grounds

- To Allegations of Dangerousness (danger of confessing to a nonexistent crime does not exist when *corpus delicti* of the substantive crime charged has been proven)

State v. Bice, 620 P.2d 227 (App. 1980)

- To Statements Introduced at Sentencing

State v. Scott, 177 Ariz. 131 (1993)

***CORPUS* Rule DOES NOT APPLY**

- To a Preliminary Hearing

State v. Jones, 198 Ariz. 18 (App. 2000)

- To Statements that are the Crime
(Attempt, conspiracy, solicitation, grand
jury statute, etc.)

State v. Daugherty 845 P.2d 474 (App. 1992)

CORPUS Rule DOES NOT APPLY

- To Statements Made Prior to the Offense

State v. Atwood, 832 P.2d 593 (1992) Rev'd on other grounds

- To Probation Revocation Proceedings

State v. Lay, 546 P.2d 41 (App. 1976)

What If I Lose?

- Right to Appeal?
 - **ARS § 13-4032(6)** State may appeal orders granting motions to suppress
 - ***State v. Roper***, 225 Ariz. 273 (App. 2010) & ***State v. Bejarano***, 219 Ariz. 518 (App. 2008) [relied on ***Lelevier***— mtn to suppress challenges only the constitutionality of obtaining evidence.]
 - But see, ***State v. Rodriguez***, 126 Ariz. 28 (1980) & ***State v. Rodriguez***, 160 Ariz. 381 (App. 1989)
- Special Action?

Appellate Standard of Review

- If raised in the trial court – abuse of discretion
 - Sufficiency of *corpus delicti* evidence is within the discretion of the trial court. *Morgan, supra*.
- If NOT raised by the defense below – fundamental error.

State v. Chappell, 225 Ariz. 229 (2010).



Questions?

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